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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 90 of the	)	PR Docket No. 93-144
Commission's Rules to Facilitate	)	RM-8117, RM-8030,
Future Development of SMR Systems	)	RM-8029
in the 800 MHz Frequency Band	)	
and		
Implementation of Section 309(j)	)	
of the Communications Act -	)	PP Docket No. 93-253
Competitive Bidding	)	
800 MHz SMR	)	

To: The Commission

REPLY COMMENTS OF
FISHER COMMUNICATIONS, INC.

Respectfully submitted,

FISHER COMMUNICATIONS, INC.

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SUMMARY

Superficially, it appears this rulemaking may be intended to address the interests of two parties. First, the Commission, in its efforts to streamline the licensing backlog, and to promote enrichment of the Treasury through channel auctions. Second, the investors of Nextel Communications and its affiliates who badly need rule changes to accommodate an apparently flawed technology.

Fisher believes strongly that the FCC should engender small business competition in the SMR marketplace through its rulemaking, not thwart it through the adoption of the Commission's or Nextel's proposals. Nextel and its affiliates developed strategic business plans to nurture a telephony-based service through acquisitions in a free marketplace. Certainly they should be able to continue to create such competition through the free marketplace. However, the FCC should not accommodate the miscalculations of a business plan by forced changes to the rest of the entire industry. Most independent SMR operators like Fisher Communications, Inc. ("Fisher") have been on the leading edge of new technology offerings in two way radio communications. Fisher embraces efficient, new technology, but wants to ensure that itself and other small and medium size SMR operators have the opportunity to utilize new and efficient technology, and that future licensing toward that end remains on a level playing field.

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To: The Commission

REPLY COMMENTS OF FISHER COMMUNICATIONS, INC.

Fisher Communications, Inc. ("Fisher" or "the Company"), pursuant to Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") rules, hereby replies to the comments submitted with respect to the Commission's Further Notice of Proposed Rule Making in the above referenced proceeding which details the FCC's most recent proposal for future licensing of the 800 MHz Specialized Mobile Radio ("SMR") Service, including both wide-area and local systems.[1] 47 C.F.R. § 1.415.

1. As indicated in its opening comments ("Comments"), Fisher has been an analog SMR service provider for 12 years, providing SMR service to thousands of end-users in the Southern California, Western Arizona and Southern Nevada market areas.

[1] Further Notice of Proposed Rule making, PR Docket No. 93-144, FCC 94-271, 9 FCC Rcd ___ (Released Nov. 4, 1994)("FNPRM").

The Company has invested many hundreds of thousands of dollars in equipment and operations in order to reliably deliver its services. Fisher is the licensee of many 800 MHz channels in both the 860-865 MHz band, proposed for wide-area licensing, and the 850 MHz band proposed for use in local service areas. Fisher's service area is defined by regional economic areas of influence, i.e., the free marketplace. This free market approach has allowed Fisher to service its market efficiently. Fisher will be profoundly affected by the Commission's decisions in the instant proceeding, and therefore has a significant interest in the outcome of the proceeding.

2. Fisher has reviewed and considered the comments and issues raised by the parties in this FNPRM proceeding, and based on that review, wishes to emphasize for the Commission those key points which are essential to ensure the fashioning of workable rules to facilitate the future use of the 800 MHz SMR spectrum.

CHANNEL ASSIGNMENT AND SERVICE AREAS

3. In the FNPRM, the Commission proposed dividing the existing 14 MHz of SMR spectrum into two categories for purposes of future licensing. The 10 MHz "upper block" would be comprised of the 200 contiguous SMR channels and would be licensed on an MTA basis in four blocks of 2.5 MHz each. The remaining 4 MHz, comprised of the 80 non-contiguous channels, would be licensed in groups of up to five channels on a station-by station basis. FNPRM at ¶ 15.

I. If the Commission Establishes Geographic Licensing of the "Upper Block" Channels, Then it Should Use BEAs not MTAs as the Geographic Area.

4. In its comments in this proceeding Fisher stated that it was opposed to Major Trading Areas ("MTAs") based-licensing. Comments at ¶ 5. Fisher wishes to clarify that it is not opposed to geographic-based licensing of the "upper block" channels per se. As described below, it is geographic based licensing coupled with mandatory migration which Fisher adamantly opposes.

5. If the Commission decides to establish geographic licensing, it should adopt the proposal set forth by several commenters that the service areas be defined by the newly-created areas recommended by the Bureau of Economic Analysis ("BEAs"),[2] rather than MTAs. BEAs most clearly reflect the actual geographic business operating and travel patterns of the mobile communications user base in most areas. They represent a smaller number of somewhat larger markets clustered around areas of interrelated commerce. In general, BEAs appear to approximate more closely than do Basic Trading Areas ("BTAs") the coverage range of existing systems. They also are based on many of the same definitional factors that characterize the typical subscriber on an SMR system, particularly the dispatch-oriented customer. Fisher believes that the transition from site specific to geographic-based licensing on the upper block channels would be facilitated by the use of BEAs.

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[2] See, e.g., Comments of the American Mobile Telecommunications Association, Inc. ("AMTA"), Cumulous Communications, Inc. ("Cumulous"), Advanced MobileComm, Inc. ("AMI"), PCIA, SMR WON and Total Com., Inc. ("Total").

II. Fisher Favors Ten (10) 20 Channel Block Licenses in Geographic Area.

6. As described above, the Commission proposed issuing four (4) 50-channel block licenses within each geographic area, but asked for commenters to address the appropriateness of alternative block sizes both smaller and larger. FNPRM at ¶ 22.

7. Fisher opposes the Commission's suggestion of four 50 channel blocks, and all recommendations of even larger blocks of frequencies. The larger the block of channels, the greater the bidding, and the less likely the small traditional SMR operator will be able to participate. Fisher prefers PCIA's suggestion of a twenty 10 channel blocks.[3] If, however, the Commission determines that a larger block of channels is absolutely necessary, then it should double the channel block size to be 20 channels. Such a channel size would accomplish PCIA's objective of allowing smaller entities entry into wide-area licensing. The smaller channel block would give larger entities the ability to select frequencies of true interest for their applications.

8. The real need of the public is to retain a competitive environment where operators of different sizes offer a multitude of different services. The Commission's proposal and Nextel's variation would rob the marketplace of the user's choice by eliminating any growth possibilities on the part of independent SMR operators.

III. The MTA Licensee Must Not Be Allowed to Engage in "Cherry-Picking".

9. Under either mandatory migration or earned mandatory retuning, the Commission should prohibit a geographic licensee from selectively retuning an incumbents' frequencies. To allow an geographic license winner to attempt to retune

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[3] See Comments of PCIA.

incumbents on a "selective" or "individual channel basis" would be disastrous. If any retuning is to be done by a MTA licensee, total retuning must be done, and not "piecemeal retuning" of selected channels. The wide-area licensee should be required, at the option of the incumbent licensee(s), to retune all channels which comprise a licensee's integrated system. In this way, MTA licensees will neither be able to cherry-pick particularly attractive channels, nor subject integrated system licensees with unwarranted disruption of their systems by relocating only a few channels sufficient to render the incumbent licensee's frequency plan unworkable.

IV. Wide-Area Systems Should Not be Segregated to the "Upper Blocks".

10. The Commission in its FNPRM concluded that the "upper blocks" would be designated for wide-area licensing, while the "lower blocks" would be designated for local licensing. FNPRM at ¶¶ 17, 18. While Fisher in general supports the Commission's proposal (see above), it feels strongly that a wide-area licensee must not be restricted to using only "upper block" channels in a wide-area configuration. The Commission must clarify that if a geographic (BEA) licensee also holds licensees for systems made up of frequencies from the "lower blocks", that it be allowed to incorporate those frequencies into its wide-area system. This use would further the Commission's goal of efficient and full utilization of spectrum.

V. Any Form of Geographic-Based Licensing Should Not Include Mandatory Relocation for Existing SMR Licensees.

11. As articulated in its Comments, Fisher strongly supports the Commission's tentative conclusion that "incumbent SMR systems should not be subject to mandatory relocation to new frequencies." FNPRM at ¶ 34. The Commission must not impose

mandatory relocation for existing SMR licensees whose frequencies lie within the range selected for MTA licensing. The comments in this proceeding reflect overwhelming vigorous and wide-spread opposition to mandatory migration.[4]

12. Fisher and others already operate wide-area analog SMR systems without requiring mandatory migration of existing users. It is clear that grant of clear contiguous spectrum is not a prerequisite to servicing customers with wide-area service.

13. To force relocation will cause massive disruption in service to end users, damaging the commercial best interest of those served, and those providing service. As Fisher explained in its comments, those end users who would suffer the disruption in service are ironically not those who would be served by MTA based service suppliers. MTA service customers would likely be more interested in mobile telephone and telephony based services, rather than those interest in lower cost 2-Way dispatch radio services.

14. Mandatory relocation serves the narrow interests of Nextel and its affiliates now recognize that the Motorola MIRS technology which they have embraced needs clear contiguous spectrum to achieve their goals of digital cellular telephony in a nationwide network. The Commission would not be servicing the public interest by putting Nextel's narrow interests ahead of the broader interests of existing end users and their suppliers.

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[4] See Comments of Airwave, API, ATG, Atlantic Cellular, ABC, B&C, Bis-Man, Bilin, Bradley, Brandon, CellCall, Centennial, Chadmoore, ComService, ComUnlimited, CICS, Cumulous, Dakota, DCL, Deck, Dial Page, DLI, DruJenk, Eden, EF Johnson, ET Comm, Ericsson, Fresno, GBRS, Gulf Coast, Joriga, Kay, Keller, Lagorio, Luczak, Madera, Morris, NashTel, Neilson, Nodak, Parkinson, PCIA, Pittencrief, Pro Tec 2, RadioComm, Raserco, Radyfield, RFComm, SMR SBC, SMR WON, So. Minn., Spruill, Stalvey, Supreme, T&K, Total, Triangle, UTC and Vantek.

15. Fisher believes that anything "mandatory" is not truly competitive and impinges on the incumbent operation giving the MTA licensee a distinct and unfair advantage. Decisions regarding relocation should be left to the parties and the marketplace which should continue to dictate the circumstances under which a licensee either will move to other spectrum to accommodate a MTA licensee or assign its channels to a MTA licensee.

16. In its FNPR, the Commission sought comment on whether its experience in establishing mandatory relocation provisions could serve as a model for the relocation of incumbent 800 MHz SMR licensees. FNPR at ¶ 36. Like other commenters, Fisher maintains that the Commission's most recent model for relocation, adopted for the 2 GHz band to accommodate the development of Personal Communications Service ("PCS") is not germane to this issue.[5] PCS is new yet to be defined by either services, or customers. SMR and ESMR in contrast are well defined services. In addition, in the microwave relocation, there was alternative spectrum available suitable for the services. There is no corresponding available spectrum available to SMRs. As the Commission has recognized, nearly all 800 MHz spectrum is already licensed with approximately 33,000 stations. FNPRM at ¶ 4.

17. Fisher strongly believes that the mandatory relocation of incumbent licensees from the upper block of SMR spectrum would be unfair to incumbents who have established viable systems under existing Commission rules and policies. These SMR pioneers would in effect be punished for developing creative and innovative use of

[5] See e.g., Comments of CellCall.

spectrum in accordance with Commission policy and with the Commission's encouragement.

VI. Fisher Supports the Concept of "Earned-Mandatory Retuning".

18. As explained above, Fisher feels strongly that any retuning must be on a voluntary basis. Nevertheless, Fisher supports the idea that a wide-area licensee may "earn" the right to mandate relocation of an incumbent system by acquiring a specified percentage of the channels in a geographic area. Fisher sees this as important protection against the "last holdout" licensee in a market which would prevent for anti-competitive reasons the rollout of a wide-area system. For this reason, we would support the following "earned mandatory retuning" proposal.

19. At such time as the MTA licensee has assembled 90% of the upper-band channels, a two-year period of voluntary negotiation with the remaining incumbent licensees would be triggered. At the end of the two-year period, if negotiations have not been successful, the wide-area licensee would have the right to relocate the incumbent, provided that the wide-area licensee offers fully comparable channels in the 800 MHz band which would not require the end user to purchase new equipment, pays all costs associated with the relocation, and demonstrates that the relocated licensee will have full 70 mile protection co-channel protection on the new channels. This will accommodate Nextel's concern regarding "holdouts" and at the same time afford ample time for serious negotiations to take place to protect the interests of any straggling incumbents.

INCUMBENT PROTECTION

20. Like a number of commenters, Fisher strongly supports the Commission's determination that "any wide-area licensing plan must take into account the interests of existing and future SMR systems that do not seek to provide wide-area service." Third Report and Order at ¶¶ 94, 106.

I. Incumbent Licensees Must be allowed to Relocate Their Systems Within Their Existing Coverage Contour.

21. Fisher in its comments proposed and herein suggest again that prior to accepting applications for any geographic license, the Commission lift the application freeze and allow incumbent licensees to opportunity to file modification applications before being locked in by a wide-area licensee. Once the Commission starts wide-area licensing, it should continue to allow incumbent systems the opportunity to modify their systems within their 20 dBμ contours. Any continuation of the freeze or severe restriction on modifications on incumbents would be a back door mandatory migration policy. Incumbents would in effect be held hostage by the geographic licensee. By acquiring the right to the geographic area surrounding an incumbent's system, the geographic licensee would be able to lay siege to an incumbent's system, and just sit back and wait, while the incumbent licensee is "starved out" with no way to modify to implement improvements to its service.

22. There must also be some further ability for an existing licensees to move within its existing coverage contour even after any geographic licenses are authorized. As the Commission has acknowledged, there are numerous situations which could require operators to relocate to preserve the viability of its systems, e.g., moving a transmitter

because of loss of site (FNPRM at ¶ 37), local zoning changes as well as Bureau of Land Management and U.S. Forest Service site policy changes.

II. Incumbents Must Be Afforded Full 70 Mile Protection by The Geographic Licensee.

23. Fisher supports the Commission's proposal to require geographic licensees to afford protection to incumbents. FNPRM at ¶ 39. However, Fisher and others in this proceeding, feel that the current co-channel separation rules are too generous. Instead of allowing a geographic licensee the ability to "short-space" an incumbent, the Commission should define a fixed radius protected service area of a full 70 miles for incumbent SMR systems in the 861-865 MHz.

"LOCAL" LICENSING

24. The Commission concluded that it will continue licensing SMR systems on the "lower 80" channels on a local basis, and suggested two alternative approaches: i) to continue licensing these channels based on the same geographic separation and channelization criteria that exist in the current SMR rules, and ii) to discontinue site-specific licensing and instead offer licenses for individual channels or small channel blocks covering defined geographic areas. FNPRM at ¶¶ 24 & 25. Fisher strongly supports the Commission's tentative finding that the first alternative is the appropriate course. As the Commission notes, because channels are already heavily licensed, the current method of licensing would ensure continuity and minimize disruption in the further assignment of spectrum for local use.

COMPETITIVE BIDDING ISSUES

25. In the FNPRM, the FCC tentatively recommended the use of a competitive bidding process that paralleled closely the model adopted for PCS spectrum auctions.[7] FNPRM at ¶¶ 72-106.

I. The Commission Lacks Authority to Implement Auctions to Award SMR Licenses.

26. Like, the vast majority of those filing Comments in this proceeding, Fisher maintains that the Commission lacks statutory authority to use competitive bidding procedures to award 800 MHz SMR licenses in either the upper or lower band.[8] Fisher is firmly convinced that Congress did not intend, much less mandate, the use of auction procedures for the assignment of either wide-area or traditional SMR systems. The legislation itself, in conjunction with the accompanying report language, evidences a Congressional intent that the Commission employ auctions for the issuance of new authorizations in newly allocated services such as PCS.[9] There is no indication that auctions were to be used for systems such as 800 MHz SMR where virtually all spectrum has already been assigned and licenses are being issued almost exclusively either for the "white space" in wide-area authorizations or to modify in some way the operation of existing, traditional systems. Congress did not intend auctions to be used as a vehicle

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[7] See Second Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2348 (1994), recon. Second Memorandum Opinion and Order, FCC 94-215 (adopted August 12, 1995, released August 15, 1994).

[8] See, e.g., Comments of AMTA, Dakota, Morris, AMI, SMR WON, PCIA, EFJ, Dial Call and the Ericsson Corporation ("Ericsson").

[9] 47 U.S.C. § 309(j); H.R. Rep. No. 111, 103d Cong. 1st Sess. 253 (1993).

to recover retroactively the spectrum value of existing systems, but rather to enable prospective licensees to put spectrum to its most valuable use on an expeditious basis. Because the licensing situation in the instant proceeding does not conform to that Congressional objective, there is no statutory basis for assigning either wide-area or other 800 MHz SMR licenses by competitive bidding.

II. If the Commission Decides to Implement Auctions on the Upper Band, it Must Not do So on the Lower Band.

27. If the Commission were to establish auction procedures for geographic licensing in direct defiance of Congressional intent, it should not do so for the Lower Band SMRs. As stated in its Comments, Fisher believes that any auctioning of channels for local service would completely ignore the needs of existing systems which are providing service to the public in on ongoing manner. Auctions of SMR spectrum will doom most small-business SMR operations to failure by removing options for future growth. If the Commission should decide to license systems based upon geographic areas with auctions, then individual licensees would be allowed to band together to bid on the area as a whole, but to operate independently of each other.

CONCLUSION

28. The SMR marketplace is approaching maturity in major markets. Most urban markets have few unassigned channels available, and across the United States, SMR spectrum is servicing more than one million commercial end users. Substantial investments have been made by both service suppliers and the public which they serve. SMR is a well defined service catering to commercial business interests who require inexpensive service to efficiently coordinate their field activities.

29. Fisher strongly urges the Commission to consider with great care the impact this proceeding will have on existing users and service providers of the SMR industry. Incumbents should be allowed to continue to use, and to provide their services without disruption. Mandatory relocation of existing licensees should not be required. Existing licensees must be permitted to modify their facilities. The Commission should strengthen its co-channel separation requirements to protect incumbent licensees and the community which relies upon them.

Fisher respectfully requests that the Commission adopt rules in this proceeding in a manner consistent with these reply comments.

Respectfully submitted,

FISHER COMMUNICATIONS, INC.

Dated: March 1, 1995